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Mediator

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Chapter 11
In re:	:	No. 15-23007 (RDD)
	:	
THE GREAT ATLANTIC & PACIFIC TEA	:	
COMPANY, INC. et al,	:	
	:	
Debtors.	:	
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THE GREAT ATLANTIC & PACIFIC TEA	:	
COMPANY, INC. et al,	:	
	:	
Plaintiffs.	:	Adversary Proceeding.
	:	No. 18-08245 (RDD)
	:	
v.	:	
	:	
PEPSICO, INC., et al.,	:	
	:	
Defendants	:	
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REPORT OF MEDIATOR

1. I am a retired judge of this Court and was selected to mediate issues between (i) Debtor Plaintiffs, The Great Atlantic & Pacific Tea Company, and certain of its affiliates (together, “**A&P**”), and (ii) Defendants Pepsico, Inc, and certain of its affiliates (together, the “**Pepsi Entities**”). I submit this report pursuant to Rule 9019-1 of the Local Rules of this Court, and ¶ 3.4 of the Court’s Procedures Governing Mediation

of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings.

2. I conducted mediation sessions with the participation of both sides, by Zoom, on July 22, 2020 and August 26, 2020. I additionally had telephonic conversations (individually and by conference call) and exchanges of emails (in each case too numerous to describe with greater particularity) with counsel for the parties before each mediation session and thereafter. As the parties had authorized and requested me to do, I shared with them, over the course of the mediation, views I formed with respect to potential outcome and risk if they were to continue to litigate. Late in the day of the second session, by which time agreement had not yet been reached, I made a Mediator's Proposal. It did not then secure the joint acceptance by each side that was required to make it an agreed-on settlement, but I understand that shortly thereafter a settlement was reached between A&P and the Pepsi Entities.

3. All parties participated in the Zoom mediation sessions (with client representatives with satisfactory authority present), and in my opinion, all parties engaged in the mediation in good faith.

4. With the mediation having turned out successfully, I understand that A&P and the Pepsi Entities are now undertaking the documentation of the settlement. It is my further understanding that a 9019 motion with respect to the settlement will be filed in the near future.

Dated: New York, New York
September 3, 2020

s/ Robert E. Gerber